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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,580	08/02/2005	Alexander Fuchs	LU 6020 (US)	1368
34872	7590	12/01/2009		
BASELL USA INC. NEWTOWN SQUARE CENTER 3801 WEST CHESTER PIKE, BLDG. B NEWTOWN SQUARE, PA 19703				
EXAMINER				
NUTTER, NATHAN M				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
12/01/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/517,580

**Applicant(s)**

FUCHS ET AL.

**Examiner**

Nathan M. Nutter

**Art Unit**

1796

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5,7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7 and 9-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 29 September 2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7 and 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al (US 6,635,715).

The reference to Datta et al teaches the production of a blend, which may be through multi-stage polymerizations, of a propylene copolymer blend that may comprise

a propylene copolymer, designated as the First Polymer Component (FPC), having an alpha olefin content overlapping with that recited herein for the second copolymer at 10 to 30% by weight at column 5 (line 65) to column 6 (line 46), which alpha olefin may be ethylene, with the first recited copolymer, designated as the Second Polymer Component (SPC), having an alpha olefin content (ethylene) overlapping with that recited herein at 5 to 20% by weight at column 8 (lines 24-49). The range for inclusion of the two polymers is shown at the Abstract. The contemplated molecular weights and MWD are shown at column 9 (lines 34 et seq.). Note the Examples.

Although the reference is silent as regards the haze values, a skilled artisan producing an identical product would have a high expectation to achieve the same haze values recited herein. Likewise, the amount of extractables would be expected, or easily controlled, as crosslink density will determine soluble fractions and a skilled artisan would know to manipulate these values for desired end-use characteristics. As such, a skilled artisan would have a high level of expectation of success following the teachings of the reference to achieve the claimed invention.

Claims 1, 3-5, 7 and 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehta et al (WO 98/10016).

The reference to Mehta et al teaches the production of a polypropylene blend comprising a homopolypropylene and a copolymer thereof, using a metallocene catalyst in a multi-stage reaction, as herein recited. Note page 21, 3<sup>rd</sup> full paragraph for the compositional limitations. The copolymer is taught to include ethylene at page 23, 1<sup>st</sup>

full paragraph, and the overlapping amounts at 12 to 15 % by weight is shown in the 2<sup>nd</sup> paragraph of page 23. The molecular weight distribution is shown at page 24, 1<sup>st</sup> full paragraph, and overlaps with that recited herein at 2.1 to 3.5. The employment of a nucleant is shown at page 26, 2<sup>nd</sup> full paragraph. The catalyst and the method of polymerization is shown at pages 5 et seq.. Further, note the many Examples. A very low haze value is shown at Table 3, page 43, of 0.3-1.0 %. Since that value was obtained at a thickness of .2 mm (see the 1<sup>st</sup> full paragraph of page 26), the production of a film of the disclosed composition, ten times as thick, would likewise be expected to have a low haze value.

As such, a skilled artisan producing an identical product would have a high expectation to achieve the same haze values recited herein. Likewise, the amount of extractables would be expected, or easily controlled, as crosslink density will determine soluble fractions and a skilled artisan would know to manipulate these values for desired end-use characteristics. As such, a skilled artisan would have a high level of expectation of success following the teachings of the reference to achieve the claimed invention.

### ***Response to Arguments***

Applicant's arguments filed 29 September 2009 have been fully considered but they are not persuasive.

With regard to the rejection of claims 1, 3-5, 7 and 9-15 under 35 U.S.C. 103(a) as being unpatentable over Datta et al (US 6,635,715), applicants argue the reference "fails to disclose the currently claimed compositions produced by the currently claimed process using the currently claimed metallocenes." Applicants' claims are drawn to a composition. How that composition is produced does not bear on the patentability of the composition, per se. The manner in which the instantly claimed composition has been prepared has not been shown to be critical as to the composition itself. No direct comparison has been made to show any differences with the composition of Datta et al. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Once a reference teaching a product appearing to be substantially identical is made the basis of a rejection and the examiner presents evidence or reasoning tending to show inherency, the burden shifts to the applicant to show an unobvious difference. *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977). *In re Schreiber*, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997). Applicants have failed to show anything unexpected or surprising. No direct comparisons have been made. As such, the reference provides sufficient suggestion to employ a metallocene catalyst, as herein claimed. This provides ample expectation for success following the teachings of the

reference since the claims are drawn to a composition, and all features of that composition are taught or suggested. Applicants have failed to show otherwise.

With regard to the rejection of claims 1, 3-5, 7 and 9-15 under 35 U.S.C. 103(a) as being unpatentable over Mehta et al (WO 98/10016), applicants argue ), applicants argue the reference "fails to disclose the currently claimed compositions produced by the currently claimed process using the currently claimed metallocenes." This is not so for many reasons. First and foremost, the catalysts taught by the reference may be identical to that recited herein. In Mehta et al at pages 5-8, when  $m=0$ , both instances, R7 may comprise the structures shown, which include the structures claimed herein when M2 is silicon, germanium or tin or those recited. Applicants have established no differences in the claim recitations over the reference teachings. Applicants' claims are drawn to a composition. How that composition is produced does not bear on the patentability of the composition, per se. The manner in which the instantly claimed composition has been prepared has not been shown to be critical as to the composition itself. No direct comparison has been made to show any differences with the composition of Mehta et al. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F 2<sup>nd</sup> 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Once a reference teaching a product appearing to be substantially identical is made the basis of a rejection and the examiner presents

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathan M. Nutter/  
Primary Examiner, Art Unit 1796

nmn

25 November 2009